IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14..12..2007

C O R A M

The Honourable Mr. A.P. Shah, Chief Justice
and
The Honourable Mr. Justice V. Ramasubramanian

Writ Appeal No.1559 of 2007

M/s. ORJ Electronics Oxides Ltd.,
Varapur Road, Perangalur,
Pudukottai District. .. Appellant/ Petitioner

versus

1. Customs, Excise and Service Tax
Appellate Tribunal (South Zonal-Bench),
By its Registrar, Haddows Road, Chennai-6.

2. The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin. .. Respondents

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Prayer : Appeal under Clause 15 of the Letters Patent against the order of a learned single Judge of this Court dated 29.11.2007 passed in W.P. S.R. No.121063 of 2007 sought to prefer to this Court to call for records of 1st respondent made in ROA 67/07 dated 12.10.2007 and quash the same and further direct the appeal filed by the petitioner in Appeal No.C/31/07 be disposed of on merits.

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For Appellant : Mr. B. Kumar, Senior Counsel
for Mr. S. Ramachandran
For Respondent-2 : Mr. P. Wilson,
Assistant Solicitor General

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J U D G M E N T

(Delivered by the Honourable Chief Justice)

Admit. Learned Assistant Solicitor General waives service for the second respondent. By consent, the appeal is taken up for hearing.

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2. The appellant is a company having its registered office in Pudukottai District. The appellant originally filed Writ Petition No.14908 of 2007 at Principal Bench at Chennai to quash the order passed by the Customs, Excise and Service Tax Appellate Tribunal - South Zone Bench, Chennai ('Tribunal' in short) dated 5.3.2007, whereby the Tribunal directed the appellant to deposit Rs.1 Crore as a pre-condition for hearing the appeal on merits. By order dated 18.7.2007, this Court gave liberty to the appellant to file necessary applications for restoration of the appeal which was dismissed for default and for rectification with relevant documents and the Tribunal was directed to consider the said applications and pass orders on merits and in accordance with law. Accordingly, the appellant filed R.O.M. (Rectification of Mistake) Petition before the Tribunal. The Tribunal revoked its earlier direction for deposit of Rs.1 Crore towards the tax dues, but directed the appellant to deposit Rs.20 Lakhs towards penalty as a pre-condition for hearing the appeal. The appellant again approached this Court in Writ Petition SR. No.121063 of 2007. The learned single Judge, however, relying upon a decision of the Rajasthan High Court in Ram Rakh Vyas vs. The Union of India & Others, A.I.R. 1977 Rajasthan 243, held that since the appellant-company is situated in Pudukottai District, the subject matter of the writ petition squarely comes within the jurisdiction of the Madurai Bench of the Madras High Court and the writ petition cannot be entertained at the Principal Seat.

3. We have heard Mr. B. Kumar, learned senior counsel appearing for the appellant and Mr. P. Wilson, learned Assistant Solicitor General for the second respondent.

4. The short question that falls before us is whether the Principal Seat at Chennai has the territorial jurisdiction to entertain this writ petition under Article 226 of the Constitution of India. The Presidential Notification dated 6.7.2004, whereby a permanent Bench at Madurai was constituted, inter alia reads as follows :

> "THE MADRAS HIGH COURT (ESTABLISHMENT OF A PERMANENT BENCH AT MADURAI)ORDER, 2004
>
> In exercise of the powers conferred by Sub-sec.(2) of Sec.51 of the States Reorganisation Act, 1956 (37 of 1956), the President, after consultation with the Governor of Tamil Nadu and the Chief Justice of the Madras High Court, is pleased to make the following Order, namely :-
>
> 1. Short title and commencement:
> (1) This Order may be called the Madras High Court

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(Establishment of a Permanent Bench at Madurai) Order, 2004.

(2) It shall come into force on 24.7.2004.

2. Establishment of a permanent bench of the Madras High Court at Madurai:-

There shall be established a permanent bench of the Madras High Court at Madurai and such Judges of the Madras High Court, being not less than five in number, as the Chief Justice of that High Court may, from time to time nominate, shall sit at Madurai in order to exercise the jurisdiction and powers for the time being vested in that High Court in respect of cases arising in the districts of Kanyakumari, Tirunelveli, Tuticorin, Madurai, Dindugal, Ramanathapuram, Virudhunagar, Sivaganga, Pudukottai, Thanjavur, Nagapattinam, Tiruchirapalli, Perambalur and Karur in the State of Tamil Nadu:

Provided that the Chief Justice of that High Court may, in his discretion, or that any case or class of cases arising in any such district shall be heard at Chennai."

(emphasis supplied)

5. Before the learned single Judge, the appellant-petitioner argued that the order impugned in the writ petition was passed by the Tribunal at Chennai, and therefore, the cause of action has arisen within the jurisdiction of this Court, and thus the writ petition would lie only at the Principal Bench of the High Court at Chennai. The learned single Judge, however, relying upon the judgment of the Rajasthan High Court in Ram Rakh Vyas vs. The Union of India & Others (supra) held that the words in respect of cases 'arising in' would mean 'pertaining to the districts of or 'arising from', and therefore the writ petition could be entertained only at the Madurai Bench of the High Court and can never be entertained by the Registry at the Principal Bench. We are afraid that the view taken by the learned single Judge is contrary to the settled legal positions.

6. In Nasiruddin v. State Transport Appellate Tribunal, AIR 1976 SC 331 , the Supreme Court dealt with a similar provision contained in Clause-14 of the Allahabad High Court (Amalgamation) Order 1948, in the following words: - (at pp340-341)

"The meaning of the expression "in respect of cases arising in such areas in Oudh" in the first proviso to paragraph 14 of the Order was answered by the High Court that with regard to applications under Article 226 of the same will be "a case arising within the areas in Oudh" only if the right of the

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petitioner in such an application arose first at a place within an area in Oudh. The implication according to the High Court is that if the right of the petitioner arose first at any place outside any area in Oudh and if the subsequent orders in the revisional or appellate stage were passed by an authority within an area in Oudh then in such cases the Lucknow Bench would not have any jurisdiction. The factor which weighed heavily with the High Court is that in most cases where an appeal or revision would lie to the State Government the impugred order would be made at Lucknow and on that view practically all writ petitions would arise at Lucknow.

The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action" is well-known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly, the cause of action can be said to have arisen partly within specified areas in Oudh and partly outside the specified Oudh areas, the litigant will have the choice to institute

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proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action."

(emphasis supplied)

7. In U.P.R.C. Mill Adhikari Parishad vs. State of U.P., A.I.R. 1995 S.C. 2148, writ petitions were filed before the Lucknow Bench of the High Court challenging a notification/order issued by the Uttar Pradesh Government at Lucknow, whereunder it was decided to sell six sugar factories. One of the sugar mills was situated within the Oudh area, whereas the remaining mills were situated outside the Oudh area. The contention raised before the High Court was that the sale in terms of the notification, if finalised, would be given effect at the places where the mills are situated and since five out of the six mills were situated outside the Oudh area, the Lucknow Bench had no jurisdiction to take cognizance, entertain and decide the writ petition in respect of the five mills in terms of Clause 14 of the Allahabad High Court (Amalgamation) Order. 1948. Allowing the appeal, the Supreme Court held as follows :

"14. ... The territorial jurisdiction of a Court and the 'cause of action' are interlinked. To decide the question of territorial jurisdiction, it is necessary to find out the place where the 'cause of action' arose. We, with respect, reiterate that the law laid down by a Four-Judge Bench of this Court in Nasiruddin's case (AIR 1976 S.C. 331) holds good even today despite the incorporation of an Explanation to Section 141 to the Code of Civil Procedure.

There is no dispute that the Amalgamation Order is a special law which must prevail over the general law. This Court interpreted the relevant expression in Clause 14 and did not take any support from any general law. The discussion by the Division Bench of the High Court by evolving the so called theory of 'exercise of jurisdiction revolving on the place of sitting' as compared to the theory of 'cause of action' is wholly misconceived and has no legal basis whatsoever. This part of the High Court judgment is mentioned to be rejected.

15. Mr. Satish Chandra, learned senior advocate appearing for the appellant has contended that even on the reasoning of the Division Bench judgment itself, the conclusions reached by the Bench are erroneous. We see

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force in the contention. The Division Bench of the High Court relying upon the judgment of the Rajasthan High Court in Ram Rakh Vyas vs. Union of India, AIR 1977 Rajasthan 243 (the judgment delivered by A.P. Sen, J. as the learned Judge then was), came to the conclusion that the words 'arising in' in the context, mean 'pertaining to the districts of' or 'arising from'. It is not disputed that in the present case, the order/notification and the advertisement were issued by the State Government at Lucknow. Without there being an order/notification by the Government, there could be no cause of action at all. The petitioner got aggrieved only from the order/notification which 'arose' from Lucknow. The grievance of the petitioner 'arose' at Lucknow which is within the Oudh area and as such, on the plain reading of the relevant provisions of Clause 14 of the Amalgamation Order, the Bench at Lucknow had the jurisdiction to deal with the matter." (emphasis supplied)

8. In Kusum Ingots and Alloys Ltd. vs. Union of India, 2004 (3) C.T.C. 365, the words "cause of action" were dealt with in detail and the Court also considered Article 226(2) of the Constitution. The relevant paragraph of the judgment is as follows :

"Keeping in view the expressions used in Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

Situs of office of the respondents — whether relevant 23. A writ petition, however, questioning the constitutionality of a parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi. (See Abdul Kafi Khan v. Union of India (AIR 1979 Cal 354 .)

24. Learned counsel for the appellant in support of his argument would contend that the situs of framing law or rule would give jurisdiction to the Delhi High Court and in support of the said contention relied upon the decisions of this Court in Nasiruddin v. STAT ((1975) 2 SCC 671 : AIR 1976 SC 331) and U.P. Rashtriya Chini Mill Adhikari Parishad v. State of U.P. ((1995) 4 SCC 738). So far as the decision of this Court in Nasiruddin v. STAT (cited supra) is concerned, it is not an authority for the proposition that the situs of legislature of a State or the authority in power to make subordinate legislation or issue a notification would confer power

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or jurisdiction on the High Court or a Bench of the High Court to entertain a petition under Article 226 of the Constitution. In fact this Court while construing the provisions of the United Provinces High Courts (Amalgamation) Order, 1948 stated the law thus: (SCC p. 683, para 37)

> " 37 . The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression 'cause of action' in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression 'cause of action' is well known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens . The litigant has the right to go to a court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular court. The choice is by reason of the jurisdiction of the court being attracted by part of cause of action arising within the jurisdiction of the court. Similarly, if the cause of action can be said to have arisen part within specified areas in Oudh and part outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The court will find out in each case whether the jurisdiction of the court is rightly attracted by the alleged cause of action."

25. The said decision is an authority for the proposition that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order was at a place outside the said area. When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum.

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27. When an order, however, is passed by a Court or Tribunal or an Executive Authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the Appellate Authority is constituted at another, a Writ Petition would be maintainable at both the places. In other words, as order of the Appellate Authority constitutes a part of cause of action, a Writ Petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the Appellate Authority is also required to be set aside and as the order of the original authority merges with that of the Appellate Authority." (emphasis supplied)

9. In Om Prakash Srivastava vs. Union of India, (2006) 6 S.C.C. 207, the Supreme Court held :

"6. Clause (2) of Article 226 of the Constitution is of great importance. It reads as follows:

"226 (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.

8. Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for

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any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. (See ONGC v. Utpal Kumar Basu (1994) 4 SCC 711)" (emphasis supplied)

10. The following extract from Alchemist Limited & Another vs. State Bank of Sikkim & Others, A.I.R. 2007 S.C. 1812 also makes it clear that the Principal Seat has jurisdiction to entertain a writ petition challenging the order of the Tribunal situated at Chennai :

"9. Before entering into the controversy in the present appeal, let the legal position be examined :

Article 226 of the Constitution as it originally enacted had two-fold limitations on the jurisdiction of High Courts with regard to their territorial jurisdiction. Firstly, the power could be exercised by the High Court "throughout the territories in relation to which it exercises jurisdiction", i.e. the writs issued by the court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be "within those territories", which clearly implied that they must be amenable to its jurisdiction either by residence or location within those territories.

10. In Election Commission, India v. Saka Venkata Rao, the petitioner applied to the High Court of Madras under Article 226 of the Constitution for a writ of prohibition restraining the Election Page 1296 Commission, (a statutory authority constituted by the President) having its office permanently located at New Delhi, from inquiring into the alleged disqualification of the petitioner from membership of the Madras Legislative Assembly. The High Court of Madras issued a writ. The aggrieved petitioner approached this Court.

Allowing the appeal and reversing the decision of the High Court, this Court held that the High Court of Madras had no territorial jurisdiction to entertain the petition.

Speaking for the Court, Patanjali Sastri, C.J. made the following observations:

[T]he makers of the Constitution, having decided to provide for certain basic safeguards for the people in the new set up, which they called fundamental rights, evidently thought it necessary to provide also a quick

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and inexpensive remedy for the enforcement of such rights and, finding that the prerogative writs which the Courts in England had developed and used whenever urgent necessity demanded immediate and decisive interposition, were peculiarly suited for the purpose, they conferred, in the States' sphere, new and wide powers on the High Courts of issuing directions, orders, or writs primarily for the enforcement of fundamental rights, the power to issue such directions, etc., "for any other purpose" being also included with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of King's Bench in England. But wide as were the powers thus conferred, a two-fold limitation was placed upon their exercise. In the first place, the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction", that is to say, the writs issued by the court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be "within those territories", which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories. (emphasis supplied)

As to the cause of action, the Court stated:

"The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Article 226 which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority 'within the territories' in relation to which the High Court exercises jurisdiction".

11. Again, a question arose in Khajoor Singh v. Union of India, a Bench of seven Judges was called upon to consider the correctness or otherwise of Saka Venkata Rao. The majority (Sinha, C.J., Kapoor, Gajendragadkar, Wanchoo, Das Gupta and Shah, JJ.) reaffirmed and approved the view taken by this Court earlier in Saka Venkata Rao and held that the High Court of Jammu & Kashmir was right in not entertaining the writ petition filed by the petitioner on the ground that it had no territorial jurisdiction. ..Speaking for the majority, Sinha, C.J., stated: It seems to us therefore that it is not permissible to read in Article 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the

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residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction." (emphasis supplied)

11. A Full Bench of this Court in Sanjos Jewellers vs. Syndicate Bank reported in 2007 (5) C.T.C. 305, has held that a writ petition challenging the order of the Debts Recovery Appellate Tribunal which is situated within the territorial limits of this Court, while the original Court is situated in another State, is maintainable. Similar is the view taken by a Division Bench of the Bombay High Court, to which one of us (A.P. Shah, C.J.) was a party in Kishore Rungta vs. Pubjab National Bank, 2001 (4) Mh. L.J. 195. In that case, it was held that the order of the Debts Recovery Tribunal in Jaipur merged in the order of the Debts Recovery Appellate Tribunal at Mumbai. The Courts in Jaipur would have no jurisdiction to entertain the writ petition which challenged the order of the Debts Recovery Appellate Tribunal, Mumbai. Even otherwise, the writ petition was maintainable in the Bombay High Court within whose jurisdiction the appellate authority is based. Part of the cause of action having arisen in Mumbai, the Bombay High Court had the jurisdiction to entertain the writ petition in view of Article 226(2) of the Constitution.

12. In the light of decided cases, it is clear that the territorial jurisdiction of the Court and the 'cause of action' are inter-lined. To decide the question of territorial jurisdiction, it is necessary to find out the place where the 'cause of action' arose. It is not disputed that in the present case, the order impugned was issued by the Tribunal at Chennai. The appellant is aggrieved by the order, which has been passed in Chennai. The grievance of the appellant arose at Chennai, and as such the Principal Bench has the jurisdiction to deal with the matter.

13. In view of foregoing discussion, it is not possible to sustain the order of the learned single Judge. The appeal stands allowed. The writ petition is directed to be numbered and placed before the learned single Judge for admission. No costs. Consequently, M.P. No.1 of 2007 is closed.

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Appellate Tribunal (South Zonal-Bench),
By its Registrar, Haddows Road, Chennai-6.

2. The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin.

Copy to

The Section Officer,
Writ Section, High Court, Chennai.

+1cc to Mr.S.Ramachandran, Advocate Sr 74567

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